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IN THE

Supreme Court of the United States

OCTOBER TERM 1965

No. 513

HERBERT HARVEY,

Petitioner,

vs.

JOHN LAWRENCE LYONS, ET ALS.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY.

PETITION FOR REHEARING, AND MOTION.

HERBERT HARVEY, PRO SE,
Petitioner,

Apt. B21, Colonial Garden Apts.,
491 Plaza Blvd.,
Morrisville, Pa. 19067

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TABLE OF CONTENTS.

	PAGE
Petition for Rehearing, and Motion	1
Summary	1
Argument	2
Conclusion	4
Motion for Leave to File Additional Facts	6
Certificate	6

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SUMMARY.

The original ground of this petition was that petitioner had been deprived of property on an equitably constructed ground with facts invented in the Supreme Court of New Jersey without trial.

An additional ground is presented here: that in the action with which the instant action was consolidated in the New Jersey courts, an action to which petitioner was not a party and of which he cannot here seek review, he has also been divested by the New Jersey courts, establishing together with the instant action a practice in that state of denying process of law and constituting a present threat to legal order there.

The Motion, also presented here, requests permission of this court to introduce in detail the facts regarding the additional ground above asserted.

ARGUMENT.

In the matter of *Hudson Trading* vs. *Saulnier*, the action in New Jersey with which the instant action was consolidated, petitioner was divested by Amended Final Judgment of the trial court. Because of the consolidation of the two cases, this appears in the certified record before this court.* It also appears there that petitioner was not a party, either plaintiff or defendant, in that matter.** Thus petitioner was divested without process of law, even more flagrantly than in the instant matter.

Petitioner, subsequently to his petition herein, commenced an action in the state court † to have the Amended Final Judgment in question vacated against petitioner on the elementary ground that petitioner was not a party, and of want of due process. The matter has not yet been disposed of by the state court.†† It is being conducted in that court in a scandalous, corrupt and unscrupulous manner which gives the assurance that access to the process of that court will, regardless the form observed, be denied. No pretense of ethical legal behavior is being observed. Enormous oppression is being directed against me in the action.

We are here dealing with a practice, rather than an isolated case, of denial of due process in New Jersey.

The denial to one litigant of access to the courts, to due process of law (and by now to any process of law at all) is in effect its denial to all. Once the principle has been estab-

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* And in the Appendix to my Petition here, page 42a.

** Certified record from Supreme Court of New Jersey, Appellate Division (Docket No. A-103-62) Appendix to Appellants' Brief, page 21a.

† Superior Court of New Jersey, *Harvey* vs. *Saulnier et al.*, Docket No. L 973-65.

†† So that my remedies there have not yet been exhausted. I do not feel that this interferes with introducing the matter here. I am not here seeking review of *Saulnier*. I am citing it as part of a pattern of denial of process, which it is thus far; and as it progresses, it gets to be more and more so. If I waited for its ultimate disposition in the New Jersey courts, the twenty-five days allowed by your rules for filing this pleading would long have elapsed.

lished—when one person has been denied access to the courts for relief—it only remains to select those other persons who will be denied access in the same way. The end of this process is that the sovereign by its whim, and not by operation of law impartially, decides who can have property in New Jersey. Moreover, the process is not limited to property. In the second matter above referred to, there is a counterclaim in which my property, and also my liberty is attacked. I suppose the principle, once in use, can also be applied to life—if people can be divested by the whim of the sovereign, they can just as well be executed at the whim of the sovereign.

In the instant matter, what recourse exists except the Supreme Court of the United States? Any expectation for relief from the courts of New Jersey is by this time a laughable proposition. Counsel for my adversaries has been unscrupulous, mendacious and scandalous in inventing facts for the New Jersey courts to play with, but as everyone is aware, he enjoys total immunity from either civil or criminal recourse for any statement, however false, which he makes in court. Application to the bar association for discipline comes to mind here. But in this matter I am dealing, not with one of the leading, but the leading (in more ways than one) attorneys of the state. It is inconceivable that the bar association [it has been necessary to delete certain words in this passage because I have been informed they would be contemptuous] would do anything, except perhaps to penalize me from bringing the matter up. To refer a person in my position to the New Jersey Bar Association would be as cynical as to refer a Negro oppressed in Alabama to his available remedies before the Bar Association of that state.

The denial of due process affecting property, the subject of the petition here, is now followed by denial of process in a matter affecting property and liberty. The two matters are connected. One must expect, in the absence of review of the procedures by this court, only that this practice will

be extended, not restricted, in New Jersey, so that process of law ceases to be the rule in actual practice.

CONCLUSION.

I suppose this court is accustomed to wild exaggerations by counsel seeking to gain some point for a client. The contentions of this petition for rehearing may sound like exaggerations. I assure this court, in the soberest of tones, that I have said nothing but the truth. Wild allegations have been made by counsel, and have been adopted by the august court of whose decision review was sought in my petition, and still wilder allegations, in the comfortable shade of that decision, and of legal immunities conferred by law, are now being made in the second action. Like money, bad law tends to drive out good, and a jurisprudence will not be slow to respond to the clarion note of autarchy struck in such decisions. Already we are back to where the whim of the sovereign is unrestrained by law.

Once the courts forsake the law, it is inevitable that the law will be forsaken by the people. For anyone who takes his business, his career or his property seriously enough, the abdication of the law by the courts leaves him only one defense. What the courts will not defend he has to defend with such other forces as he can raise. The law of the gangster moves in where the law of the state moves out. As the language of this memorandum may suggest, I am not the type for it—I have other interests than business and property, and I am not going to go in with guns to defend what the law will not defend for me. But the refusal of the court of last resort to review a matter in which access has been blatantly refused in lower courts to even one litigant (be he the worst of scoundrels) starts a long process to work the beginning of which may be small but the end of which is the rule of force in the hands of extra-legal defenders of life and property—the imperium in imperio.

I don't know, but perhaps counsel are in the habit of wailing in this court about the collapse of legal process in

this or that state, and the court may be weary of exortations to defend the sanctity of law. If so, allow me to add that there are cases where the consideration is valid. I am not making this application to defend property. I care too little for the money value at stake in this litigation ever to have troubled this court, plagued as it is with the battling interests of a continent, to review my case. I am concerned, as every citizen should be concerned, and as every judge must be concerned, with the question whether I have access to the legal instrumentalities of the community in which I live. At present I do not. More, my very application for relief is bringing upon me heavy penalties in the courts to which I apply. The record is clear on these matters, although the record is not complete here. If nothing else, the injunction to brevity which I read in your rules of practice restrains me from setting forth the whole story in this pleading, as does a limitation to twenty-five days for preparation and printing. I append a motion to this petition for permission to disclose the rest of the story fully in this court.

No man is ever hung with a good opinion of the law, and it may be that a busy court will want to employ this generalization as dispositive. But it is precisely my opinion of the law which is here relevant, and that of any citizen whose legitimate concern is to know whether the law operates impartially for all. It may be that this court is indifferent to laymen's opinion of the law. But there exist millions who cannot be indifferent. Their concern must be with the quality of the law under which they live. No one, I nor any other reasonable man, can have a good opinion of a jurisprudence which denies access to any citizen. To secure such access is the whole reason for this petition. Eichmann got a fair trial, and that in Israel. I inquire whether I may have one in America.

MOTION FOR LEAVE TO FILE ADDITIONAL FACTS.

Petitioner respectfully moves for leave to present to this court the full facts in the matter of the deprivation of civil rights to petitioner in the New Jersey courts, and 45 days time after granting the motion in which to do so. The reasons for this Motion have been stated above.

Petitioner prays that this court grant rehearing of its Order of November 15, 1965 denying the Petition for Writ of Certiorari and that a Writ of Certiorari be granted to review the judgment of the Supreme Court of New Jersey in the above entitled case as pleaded for in the Petition docketed herein August 30, 1965. Motion is annexed as part hereof.

Respectfully submitted,

HERBERT HARVEY,
Attorney pro se.

CERTIFICATE.

I hereby certify that the foregoing Petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

HERBERT HARVEY,
Petitioner.